

## 1 UNI TED STATES DI STRI CT COURT

## 2 SOUTHERN DI STRI CT OF OHIO

## 3 WESTERN DI VI SI ON

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5 ALI BAHAR, : CIVIL NO. 1:01CV798  
6 Plaintiff, : (Consolidated with  
7 -vs- : CIVIL NO. 1:02CV697)  
8 CITY OF CINCINNATI, : Fifth Day of Jury Trial  
9 Defendant. : Tuesday, January 25, 2005  
Covington, Kentucky

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11 EXCERPT OF TRIAL PROCEEDINGS  
12 CLOSING ARGUMENTS  
13 BEFORE THE HONORABLE MICHAEL H. WATSON, JUDGE  
14 AND JURY

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24 Court Reporter: Julie A. Wolfer, RDR, CRR

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## PROCEEDINGS

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MR. FREKING: Okay. Thank you, Your Honor. May it please the Court.

Ladies and gentlemen of the jury, first of all, as we said in opening statement, thank you for your time and attention this week. It's probably gone on a little bit longer than you would prefer, but for one reason or another that seems to be how things sometimes happen.

When we stood up here in opening statement, we gave you an outline of what we would prove during the case. I think throughout the testimony this week we've done what we said we would do in opening statement and we've done more than what we said we would do. It is a very clear picture that has emerged from the testimony.

First of all, Mr. Bahar was a very successful project manager for the City of Cincinnati. Joe Nienhaus, one of the first few witnesses on the witness stand, described him as a man of integrity and he said he was shocked when he learned that Mr. Bahar had been reprimanded by Mr. Campbell.

Other than the reprimand, there were no blemishes on his record in 16-and-a-half years of employment. And he was a proud man. He was proud of his accomplishments. He came over here from Iran, moved to Chicago, moved to Louisville. And after he got married, kind of working off and on supporting his

1 wife when she was in school. He eventually got his degree in  
2 1987. He was proud of that and he wanted to be an engineer.  
3 And he was treated as an engineer by the City of Cincinnati  
4 until the spring of 2000. He was a project manager with  
5 extraordinary performance results, as we saw the very first  
6 day, and it's Plaintiff's Exhibit Number 2.

7 And, unfortunately, beginning in 2000 we've seen a  
8 career that has been derailed for no legitimate  
9 nondiscriminatory or nonretaliatory reason. And what's amazing  
10 about the evidence that's in this record is that it's not only  
11 been Mr. Bahar's career that has been derailed but it's been  
12 the career of every other foreign-born high-level professional  
13 that came into contact with Mr. Karney and Mr. Campbell. And  
14 we've heard from each of them how prior to 2000 they had  
15 substantial roles and responsibilities within the organization  
16 and slowly but surely those roles and responsibilities have  
17 been chipped away at and been taken away.

18 The impact on Mr. Bahar has been significant. I'm  
19 going to talk to you in a little while about damages and what  
20 you may award for him and what you do with your verdict, but  
21 this case has never been about money. It's always been about  
22 principle for Mr. Bahar. He's always wanted to stand up to an  
23 organization in MSD that just had this knack for treating  
24 people differently who were foreign born and people of color.  
25 You'll remember one of the witnesses or one of the employees,

1 Mr. Campbell, could just describe, well, he was dark skinned,  
2 and he was one of the people treated differently.

3 And I talk about the impact on Mr. Bahar because we  
4 all know how important people's jobs are. And in Mr. Bahar's  
5 case, I think it's extraordinarily important because of his  
6 background and the work he's gone through to get his degree and  
7 the work he's gone through to progress and be respected in this  
8 country by virtually every colleague he's ever worked with.  
9 Two exceptions: Campbell, Karney.

10 You know, jobs are important to people. They're the  
11 very soul of some people. I almost laugh sometimes, I always  
12 notice in the obituaries, because I'm an employment lawyer,  
13 when people die, the headline's usually so and so, comma,  
14 engineer; so and so, comma, architect; so and so, comma,  
15 something else. You meet people for the first time; after  
16 getting introduced to them, the next question invariably is  
17 what do you do? And we're not meeting are you a father, are  
18 you a mother, are you a citizen volunteer? The question is  
19 normally what do you do, what job do you hold?

20 And it's the impact on this on Mr. Bahar's life since  
21 2000 we're talking about. There is no legitimate reason for  
22 Mr. Bahar to be treated in the way he was beginning with the  
23 criminal investigation of Mr. Bahar in 2000.

24 The pattern is so stark because it's a relatively  
25 short time frame. We've got a common decision maker in all of

1 these cases. We've got one department we're talking about.  
2 We're talking about MSD. All had stellar performance records  
3 up until the arrival of Mr. Campbell and Mr. Karney, and all of  
4 them testified about how their careers were derailed. And you  
5 could see the pain in their faces and hear it in their voices.  
6 I don't want to describe them as angry, but you could tell that  
7 there was deep disappointment in how these gentlemen had been  
8 treated by MSD.

9 Mr. Huang testified about how he was a supervisor,  
10 head of an area with 120 to 130 people reporting to him, and  
11 that was taken away, now supervising 2 or 3. And they  
12 characterize that as a lateral move because the City wants to  
13 tell you that if we don't affect your pay, everything is  
14 lateral.

15 Well, ladies and gentlemen, you do not leave your  
16 common sense at the front door when you come into this  
17 courthouse. You know how for yourselves whether or not a  
18 material change in your job or your job responsibilities and  
19 how you feel at work without necessarily your pay being  
20 affected. It's not all about the money as the City wants to  
21 make it. They want you to believe that they can treat people  
22 however they want to treat them as long as they don't affect  
23 their pay.

24 I suggest to you that one reason Mr. Bahar was treated  
25 in the manner that he was treated was because Mr. Campbell,

1 Mr. Karney, consciously or unconsciously, wanted him to quiet  
2 and give up. And they expected all of these -- one or more of  
3 these folks to quiet. And these are men of principle and they  
4 expect that to be recognized in this courtroom.

5 Donepudi, Rao Donepudi, very interesting story.  
6 Campbell arrives on July 19th, 1999, and, lo and behold, early  
7 the next year he decides that he can judge Mr. Donepudi's work  
8 performance for the entire year of 1999. And he takes his  
9 extraordinary step and says I'm going to compare my rating of  
10 his with Mr. Huang's, and, lo and behold, Donepudi's  
11 performance rating goes down. Had never done that with an  
12 employee previous, has never done it since.

13 Donepudi was passed over when the job above him became  
14 available and was given to an American-born person by the name  
15 of Kesterman. Donepudi testified that he now does virtually  
16 nothing on his job. Again, it's a material change in job  
17 responsibilities.

18 Saeed, Mr. Saeed, one of these engineer-in-training --  
19 engineers-in-training who were told, well, you can't be an  
20 engineer-in-training anymore, you need to go get your P.E. He  
21 goes and gets his P.E., he expects to be transferred or  
22 promoted to senior engineer, and the City says, sorry, we were  
23 kidding. This is bait and switch time at MSD.

24 Mr. Schneider, as much of a good friend he is with  
25 Mr. Campbell, was forced to testify under oath yesterday that

1 obtaining your P. E. makes it automatic that you will be  
2 promoted to the position of senior engineer. The City has  
3 offered no explanation why they forced Mr. Saeed, another  
4 foreign-born individual, to go through Civil Service  
5 Commission, the Court of Common Pleas, and the Court of Appeals  
6 to get what was automatic for American-born individuals.

7 Sam George testified, virtually all of his duties have  
8 gone. His responsibilities on paper in the Cincinnati  
9 municipal code are the same, but all of his duties and  
10 responsibilities have been taken away.

11 One of the issues you're going to have to decide, the  
12 City is going to try to argue that somehow because his pay was  
13 not adversely affected, that Mr. Bahar never was treated  
14 adversely on the job. We suggest to you that the evidence  
15 proves pretty convincingly that the cumulative effect of all of  
16 the treatment of Mr. Bahar constitutes substantial adverse  
17 action.

18 And I'd like to just run through the evidence of the  
19 adverse actions that have occurred to Mr. Bahar. Number one,  
20 first and foremost, you talk about an improper motive, the  
21 criminal investigation. Now, you know, we can all disagree  
22 whether Quinn ran a loose ship, we can disagree whether Quinn  
23 gave out verbal okays that maybe he should not have, we can  
24 disagree about whether or not the commissioners would have been  
25 happy or unhappy with how Quinn ran his ship; but worst case

1 scenario in this entire blowup that resulted to the reprimand  
2 was that some documentation was not written down. Nobody  
3 questions the legitimacy of the charges, whether this company  
4 Black & Veatch should be paid for the work that Mr. Bahar was  
5 involved with, and somehow Campbell and Karney decide they're  
6 going to refer this up to the law department to see if we can  
7 charge him with a crime. Mr. Karney was asked yesterday the  
8 basis for that, and he said something like, I don't know, when  
9 I started with the City I heard that if somebody commits a  
10 crime and you're part of it, that you can be held liable also.  
11 That's the silliest explanation I ever heard in my life.  
12 Nobody before or since Mr. Bahar has been subjected to that  
13 kind of treatment. Nobody else has been referred by Campbell  
14 or Karney for a criminal investigation.

15 Think about that. What happened. There was not a  
16 written authorization for a change form on a job, and somehow  
17 they think he's going to be charged with a crime?

18 Then he gets reprimanded. You know, the fact of the  
19 matter is the first step in the progressive discipline system,  
20 as Miss Johnson told you, the very first witness in the case,  
21 was an oral reprimand. What they should have done to Mr. Bahar  
22 if it was consistent with their policy that they were going to  
23 do anything at all was they could have walked up, put their arm  
24 around him, and said, Listen, three years ago you should have  
25 gotten a written authorization; we've got a new regime in order

1 here; please follow -- make sure you get written authorizations  
2 in the future, okay; it's a new regime in town, it's not the  
3 Quinn regime anymore; do things differently. And that would  
4 have taken care of the problem. Instead, they have to go over  
5 the top and reprimand him.

6 Then you have the reclassification. This rule has  
7 never been enforced before by the City. It's been on the books  
8 forever. Last time it was enforced, according to Miss Johnson,  
9 was sometime in the 1980s.

10 Well, he gets reprimanded. He files an EEO internal  
11 complaint, and all of a sudden it occurs to Mr. Karney,  
12 Mr. Campbell, maybe we should reclassify the EITs.

13 Now, you've got some credibility issues to decide in  
14 this case because they always -- when I was talking to  
15 Mr. Campbell, they've always got some excuse to try to explain  
16 away things. And one way they want to explain away the  
17 ten-year rule enforcement all of a sudden is they want to say,  
18 well, that wasn't our idea; that was the idea of HR. Well,  
19 last Wednesday when we started, Miss Johnson told you who  
20 started the ten-year rule stuff? It was Mr. Karney. Out of  
21 the blue coming to her about the ten-year rule. All of a  
22 sudden after the EEO internal complaint was filed, they want to  
23 enforce this rule that had not been enforced since the 1980s.  
24 And guess who is going to be first? The guy who was one of the  
25 top two people in that department is going to be the first guy

1 recl assifi ed.

2 Now, thi nk about that. They've got -- we're going to  
3 get to whether there was an opening in wastewater collection or  
4 not, but they wanted to send him to wastewater collection.  
5 It's a less desirable place. So thi nk about the logic of,  
6 okay, we got an opening over here in wastewater collection.  
7 Who are we going to pick? Mr. Bahar. The most experienced,  
8 the most well -respected EIT they had is selected to go down to  
9 wastewater collection.

10 Mr. Campbell and Mr. Karney can almost not contain  
11 themselves. You'll see the document August 18th, 8:30 in the  
12 morning, there is a Civil Service Commission meeting or  
13 something at which this change in classification is approved.  
14 By 11:30 they're up talking to Mr. Bahar saying we are going to  
15 send you to wastewater collection.

16 That was acknowledg ed, at least Mr. Campbell  
17 begrudgingly acknowledg ed that wastewater collection was vi ewed  
18 as a less desirable place.

19 The transfer there was unl ike anybody else. Everybody  
20 else who was an EIT was allowed to stay in their department.  
21 The other people that were EITs were generally in wastewater  
22 engi neering. They remained there. They did the same exact  
23 job. Their titles were just changed from EIT to CET-4. On the  
24 other hand, Mr. Bahar's job was compl etely changed and his  
25 responsibilities in wastewater collection amounted to nothing

1 at all.

2 What did their witnesses say about that? Well, they  
3 had three or four people come in yesterday. Mr. Johnstone,  
4 again, this is on cross-examination after he's fed you a good  
5 story, he finally admits what he admitted in his deposition,  
6 that contrary to what Mr. Campbell and Mr. Karney testified  
7 under oath about there being this need for somebody in  
8 wastewater collection, Mr. Johnstone testified yesterday there  
9 was no vacant position at the time. And that's why there was  
10 no work for Mr. Bahar to do and that's probably why he had no  
11 chair, no phone, no computer.

12 Mr. Johnstone contradicted Mr. Campbell, Mr. Karney.  
13 Their credibility is seriously in jeopardy. And when the  
14 credibility of Mr. Campbell and Mr. Karney are in jeopardy, the  
15 liability of the City becomes fairly clear.

16 Mr. Wiemer yesterday, he took over supervision of  
17 Mr. Bahar in late 2001, early 2002. He said his primary task,  
18 that is the primary task of Mr. Bahar, was map making and  
19 involved no mechanical engineering skills.

20 Mr. Schneider testified. He was social friends and --  
21 with Mr. Campbell and still has a business relationship with  
22 the City of Cincinnati. He confirmed that obtaining your P.E.  
23 license is a ticket to becoming a professional -- to becoming a  
24 senior engineer, contradicting the story about Sohail Saeed.

25 And Mr. Schneider, he was the superintendent of

1 wastewater treatment supervising 420 people, millions and  
2 millions and millions of dollars, supervising engineers. Now,  
3 supervising the engineers, and guess what? They waive the  
4 requirement that he have a P.E. license for that job. How  
5 convenient was that? He's American born, we're going to waive  
6 the P.E. requirement for this guy, but we're not going to waive  
7 the P.E. requirement for the engineers-in-training so that we  
8 can move Mr. Bahar to a less desirable place of wastewater  
9 collection.

10 Mr. Bahar suffered humiliation, embarrassment, and  
11 degradation while he was in wastewater collection. Then when  
12 he's in wastewater collection, he dutifully does what the City  
13 suggested he does. He went out and got his P.E. license. He  
14 gets his P.E. license. He comes back with Mr. Campbell, says,  
15 Mr. Campbell, I worked in wastewater engineering for 12 years,  
16 I had stellar performance reviews, I would like to come back to  
17 wastewater engineering and become a senior engineer. Guess  
18 what? Campbell says no room at the inn. The reason he says  
19 there's no room? The direct quote from his deposition and he  
20 admitted on the witness stand, lack of trust in Ali Bahar.  
21 Ladies and gentlemen, that's code words for retaliation. He  
22 didn't trust the guy who stood up to him and notified the City  
23 that he believed he was a victim of national origin  
24 discrimination by Mr. Campbell. That is code words. That's a  
25 virtual admission that you are retaliating against someone who

1 is engaged in protected activity. You don't trust the whistle  
2 blower when you're the boss. And that's what Mr. Campbell  
3 admitted to you.

4 Mr. Bahar was eventually transferred over to the storm  
5 water, even though he had no prior experience with storm water  
6 and it did not involve much use of his mechanical engineering  
7 skills.

8 Even when he went over to storm water, the boss says  
9 or makes a recommendation that Mr. Bahar ought to be trained  
10 for a senior engineer job in this new area for him, storm  
11 water, new area of storm water. And guess what? A training  
12 request comes up to Mr. Campbell, a training request to learn  
13 his job; request denied. No legitimate reason has been offered  
14 by the City for the denial of that training request. And so  
15 he's still stuck in storm water as a senior engineer even  
16 though where he belongs and where he did a wonderful job was in  
17 wastewater engineering.

18 It's this cumulative effect of this adverse treatment  
19 from 2000 really to the present that constitutes a substantial  
20 adverse -- the substantial adverse actions for Mr. Bahar.  
21 Remember, no other EIT was transferred like Mr. Bahar was  
22 transferred to duties in which he had virtually nothing to do  
23 when he was in wastewater collection. Sure, he did a little  
24 bit and, sure, he got good performance reviews, but he had  
25 nothing to do and he wanted to be a productive member of MSD.

1                   Now, one of the things you have to wonder about in a  
2 case like this is credibility. You know, I've been doing this  
3 for a long time, about 20 years. And an employer in a case  
4 like this has such an incredible advantage over an employee.  
5 The employee has no records. The employee has to rely upon  
6 what their recollection was of things that occurred. They have  
7 no opportunity to go out and get these records. They've got to  
8 go through extensive discovery with these guys. You would  
9 think an employer who takes adverse action against an employee  
10 could at least keep their stories straight. Employers lose  
11 these cases when they can't keep their stories straight.

12                   For example, on the reclassification issue and the  
13 transfer, one of the central issues here was the transfer to  
14 storm water collection. Mr. Minges yesterday, Mr. Campbell --  
15 let me take that out of your view for a second. Mr. Campbell  
16 testified under oath that Minges, the guy in wastewater  
17 collection, wanted Ali Bahar, came to him with a need. First  
18 of all, Mr. Johnstone has already said there was no vacant  
19 position. Well, we have Mr. Minges up here and after he told a  
20 different story when he was testifying, we showed him his  
21 deposition testimony: During the discussions with Mr. Campbell  
22 that resulted in Mr. Bahar being placed in that vacant  
23 position, who first mentioned Mr. Bahar? I don't have any  
24 idea.

25                   Now, if Mr. Minges had come to Mr. Campbell and

1 specifically wanted Mr. Bahar, you would think he would have an  
2 idea as to who mentioned Mr. Bahar.

3 You've got a series of these credibility issues. And,  
4 again, an employer, you would think, could get their story  
5 straight.

6 The referral to the law director, Johnson said only  
7 serious issues would be referred to the law director for  
8 possible criminal investigations. Karney yesterday gave  
9 some -- I don't even know how you describe his explanation. It  
10 was no explanation at all.

11 The reprimand. Niehaus is known for his good notes.  
12 Niehaus came in and testified and said I told him exactly the  
13 opposite; it might have been in there, it might have not been  
14 in there; don't use it against Mr. Bahar if it's not in there.  
15 And Campbell runs with this lack of notes and tells Karney that  
16 Mr. Niehaus was known for his good notes, completely contrary  
17 to what Mr. Niehaus told them.

18 The decision to enforce the ten-year rule.  
19 Miss Johnson the very first day, I said why did you have to all  
20 of a sudden enforce the ten-year rule? Because there was a  
21 need to do so. Campbell said no, it didn't have to be a need;  
22 it was automatic. The reason he had to run away from the need  
23 thing is because they didn't go out and hire a bunch of  
24 professional engineers. They didn't have a need to move these  
25 EITs out. It was an excuse and nothing more.

1 Who prompted the reclassification? We talked about  
2 that earlier. Miss Johnson testified it was Karney who came to  
3 her.

4 Who prompted the wastewater collection transfer?  
5 Minges, I just showed that to you, I have no idea who brought  
6 up Mr. Bahar's name. And Campbell says it was clearly Minges.

7 And was there a vacant position in wastewater  
8 collection? Johnstone says no and, again, Campbell says yes.

9 You would think that if all of these guys still work  
10 there or are recently retired from the City of Cincinnati, you  
11 would think that if they had credible explanations for how they  
12 treated Mr. Bahar, they could keep their stories straight. But  
13 they can't.

14 Finally, I want to address before Mr. Giglio argues  
15 and then I'll have a short chance for a rebuttal is the issue  
16 of damages. The case like this because Mr. Bahar has not been  
17 fired, you have a very difficult task. I think I mentioned  
18 this in opening statement. You're going to have the job --  
19 there's no mathematical formula to figure out the value of  
20 what's happened to Mr. Bahar, how he has felt emotionally.  
21 Laura Bahar testified about how he was a changed person  
22 comparing how he was before the reprimand and all this nonsense  
23 that happened and today. She testified very credibly about the  
24 impact on him and his family. Mr. Bahar kind of humbly  
25 testified about that and he admitted that he doesn't like to

1 admit the extent of emotional distress that he suffered.

2 How did Mr. Bahar -- how did he feel when he was put  
3 in these demeaning, degrading jobs with virtually nothing to  
4 do? How did he feel when he found out that Mr. Lutz gets hired  
5 as a senior engineer in wastewater engineering off the street,  
6 he gets paid \$70,000 a year? He gets promoted to senior  
7 engineer; he stays in the mid fifties.

8 You're going to have to figure out some formula, the  
9 collective wisdom of the eight of you, that somehow values that  
10 suffering that Mr. Bahar has suffered and the damages occurred  
11 to him.

12 One way to look at it is if you were a professional,  
13 how much would you want to be paid if you were forced to endure  
14 a frivolous criminal investigation against you, you were forced  
15 to put up with this unnecessary reprimand, you were forced to  
16 work in locations of your workplace that were undesirable and  
17 given no work for years, months and years? How much would you  
18 demand to be paid to put up with that kind of treatment on the  
19 job? One way to look at it.

20 Another way to look at it might be the situation of  
21 humiliation is the amount of money that you think you'd be  
22 entitled to for a day, on some kind of day or weekly formula  
23 for being subjected to this kind of humiliation and  
24 embarrassment. But that's, again, that's why we have eight  
25 people in a jury box.

1                   Frankly, that's the most difficult decision you have  
2 to make is not whether he's entitled to judgment but it's going  
3 to be the calculation of damages for which he's entitled  
4 because he was the victim of national origin discrimination,  
5 treated differently than American-born people, and it's borne  
6 out by the pattern. He was a victim of retaliation because  
7 shortly after he engaged in protected activity, he was  
8 subjected to a series of adverse employment actions.

9                   So as I said before, thank you for your attention this  
10 week and during this closing argument.

11                   THE COURT: Thank you, Mr. Freking.

12                   Mr. Gi gl i o, you may give your closing argument on  
13 behalf of the defendant.

14                   MR. GI GLI O: Thank you, Your Honor.

15                   Ladies and gentlemen, on behalf of the City, I want to  
16 thank you as well for your patience, listening to all the  
17 evidence before rendering a decision, and for all your time.  
18 This case did take a little longer than I think we all wanted  
19 it to take, but we appreciate you listening to everything.

20                   As you can see from the procedure, Mr. Freking got to  
21 speak first and he will get to speak after I conclude my  
22 argument to you. And, again, that goes to the basic  
23 fundamental basis we're all here, the plaintiff, not the  
24 defendant, the plaintiff has the burden of proof. So that's  
25 the reason he goes first, I go second, and he gets another

1 opportunity after I sit down to talk to you again.

2 I think what I need to address first is what my  
3 impressions of this case is all about. This case is not one of  
4 discrimination. It's a case of pride. I'm not saying that  
5 pride is wrong or incorrect. Everyone is entitled, I think I  
6 mentioned that in my opening statement, to be proud of what  
7 they do, to be proud of their accomplishments. But pride  
8 sometimes can get in the way of the truth, and that's what  
9 happened here.

10 This is no reflection on someone, you've heard over  
11 and over the fine record of this man. The City has not  
12 contested that. In fact, every one of our witnesses I asked  
13 how was his job work? Very good. Excellent. That's not the  
14 issue.

15 The issue also is not what one person subjectively  
16 feels is the reason for what bestows upon them. A lot of  
17 things happen to all of us in life. I think a very telling  
18 comment by Mr. Freking is you have to accept responsibility.  
19 Things happen. Good things happen. Bad things happen. There  
20 is a reason for it all. But it isn't always because of someone  
21 conniving, planning, plotting to discriminate against them.

22 I can't put myself in the head of this individual. I  
23 was not born in Iran. I do not know the feelings and concerns  
24 of someone born in that part of the world that would be  
25 concerned how other people look upon them. I can't. I can't

1 do that. That would be ridiculous on my part. But that's what  
2 we're dealing with here is perception. But there has to be  
3 proof. There has to be evidence.

4 We heard repeatedly of this criminal investigation. I  
5 think we were all in the same courtroom. We were all awake.  
6 We were all listening. You heard witnesses from that chair.  
7 Is there any criminal investigation on this gentleman? No. To  
8 the contrary, there was not. Hear it. It wasn't criminally  
9 investigated.

10 We hear the issue of the cumulative effect of adverse  
11 action. Granted, the City would point out to you that there  
12 was no adverse action because we believe there wasn't.

13 The first item mentioned by Mr. Freking was the  
14 reprimand. You saw the reprimand, you saw how it was written,  
15 what it stated. You heard every witness testify as to the  
16 effect of it. None. You heard -- you heard no testimony that  
17 jobs were applied for and because of that reprimand he didn't  
18 get them. You heard nothing like that. There was no evidence.  
19 There was absolutely nothing.

20 Pride hurt? Again, we go back to pride. Certainly.  
21 Certainly.

22 We go to the situation of the basis of the reprimand.  
23 You may not even agree, you may agree with Mr. Huang. You  
24 know, I don't know what happened before. You fell as came, you  
25 being the new administration, but let's just all forget about

1 it. Maybe you would replace your own judgment and maybe you're  
2 sitting there going that's -- I wouldn't have done anything.  
3 You might not have. But was the actions taken by MSD and  
4 Mr. Campbell when this came to light, when you heard the  
5 concerns of standard operating procedure spending money that  
6 hasn't been authorized, usurping the authority and duty of the  
7 county commission who they have to deal with on a regular basis  
8 on millions of dollars of projects, that's a concern. That's a  
9 serious situation.

10 We talk about the investigation by Mr. Campbell, the  
11 fact that Mr. Niehaus and his notes, the discrepancies. You  
12 look at the -- and it's in evidence. You look at the memo that  
13 Mr. Campbell wrote to Mr. Karney, and what's he saying there?  
14 He tells him I've talked to supervisor and superintendents and  
15 they've told us what the plaintiff has said might be possible.  
16 He's giving both sides.

17 You heard of the reprimand process. You heard there  
18 was no -- no involvement to do further acts, which they could.  
19 They didn't. That was it. That's the adverse action of the  
20 reprimand.

21 Now we get into the reclassification. Who asked who?  
22 You heard Mr. Karney say I was interested on the number of  
23 engineers; HR came to me. I think you can figure that out. I  
24 think you don't leave common sense at home. Is that really a  
25 conflict?

1                   We have six people that are not all Iranian, they're  
2 American-born, they're foreign-born, they're all reclassified.  
3 One of the elements that you'll hear about in your charge, and  
4 the Judge will give you a charge at a different time, whether  
5 these similarly situated individuals, all of these people were  
6 reclassified, all went from project manager duties to some  
7 other duties within the classifications. You heard repeatedly  
8 Mr. Johnson, Mr. Karney, Mr. Campbell, Mr. Huang, the need to  
9 work people within the classification. Mr. Minges, working  
10 within the classification. Mr. St. John, working within that  
11 classification. There is a reason for it. All treated the  
12 same.

13                   The plaintiff would have you believe that this mass  
14 conspiracy is how can we discriminate against this gentleman,  
15 how can we -- what can we do? We'll just move an entire group  
16 of people out, change all their jobs, and that will take care  
17 of that. You have to believe that? Is that credible?

18                   The argument made is that he went to a different  
19 division. You also heard evidence, and I don't believe you  
20 heard any contrary evidence, that employees of the Metropolitan  
21 Sewer District do move from division to division. That's what  
22 happens. It's all the same department. They do that.

23                   Get into the issue of whether there was a vacant spot,  
24 a new spot, what the situation was. I think Mr. Minges hit it  
25 right on the head. You have to move quick or you lose the

1 spot. This has been reinforced by other people who testified.  
2 The City of Cincinnati, if it's vacant, you're not using it,  
3 you're losing it. Plain and simple. And what bears that out,  
4 what shows that that's absolutely true is that when Mr. Bahar  
5 did get his promotion and was promoted and received the senior  
6 engineer position, they didn't fill it quick enough. There was  
7 no list. They took it away. Mr. Minges said they took it  
8 away. He eventually got it back and had to take a different  
9 scenario to do the CET-4 position work. They took it away.  
10 That's how it happens in the City.

11 We get into the issue of this cumulative effect, and I  
12 think this is important because you look at the situation of  
13 Mr. Lutz, this man that was hired. He was hired, and you may  
14 recall and you'll have in the jury room exhibits, you'll have  
15 Mr. Bahar's sworn affidavit under oath in 2001 that he believed  
16 he was retaliated against and discriminated against because  
17 someone with lesser skills than he had got the job, namely,  
18 Mr. Lutz, and paid a lot more. Again, he may believe that. He  
19 certainly had the record. He certainly has the skills. He's a  
20 knowledgeable individual.

21 This is no reflection on him in that regard. The job  
22 opening was for a senior engineer. A senior engineer  
23 repeatedly testified to and uncontradicted must have a  
24 professional engineer license. In 2001, May, Mr. Bahar did not  
25 have that license. He couldn't apply for that position. He

1 got his license in 2002.

2 To claim that he's been discriminated against may give  
3 you a little better insight of the mindset here. What is he  
4 thinking? Is he angry? I don't know if he's angry.  
5 Disappointed? I don't know. Upset? I don't know. But he  
6 sees somebody now doing work that he feels he's as qualified,  
7 if not more than qualified; because he's hired on the outside  
8 where the market changes what bears, he's making more. So  
9 what's he claim it is? It's discrimination. It's  
10 discrimination. It's retaliation.

11 Again, you don't leave your common sense at home.  
12 When you look at the issues of who has control here, Mr. Karney  
13 encouraged plaintiff to get a P.E. license. Plaintiff thanked  
14 him, sent him -- thank you for talking to me in March of '99,  
15 challenging me to get that. Mr. Karney knew that's -- you want  
16 to advance, that's what you got to do. He did. He was  
17 promoted to senior engineer. He got an increase commensurate,  
18 no evidence to the contrary, with others. And I think there is  
19 some of those individuals you saw, you'll have an exhibit, that  
20 actually got more. One of them was a gentleman named Biju  
21 George, foreign born. He actually got more. So we'll talk  
22 about patterns and practices here. I think that's something  
23 you need to consider.

24 I think you also need to consider the duties, the  
25 duties of the CET-4 was obviously doing different work. Was it

1 work he wanted to do? He wanted to stay in wastewater  
2 engineering. The City is going to argue that's what he wanted,  
3 but he didn't have a license. He changed classifications.

4 And I think what's really telling here is the  
5 plaintiff's own witnesses. I don't believe you would believe  
6 Mr. Huang is opposed to Mr. Bahar. I don't believe that you  
7 would take his testimony as one of favoring the City. He has  
8 his own complaints. But what did he say? What did he say when  
9 I asked him, well, what about the other EITs? When those  
10 project manager jobs were taken back to Mr. Bahar, what about  
11 the other witnesses? I treat them all alike. They were all  
12 taken back.

13 It's their witness. There's no evidence that they did  
14 the same thing. Did he stay in the same division? He did.  
15 And, in fact, the gentleman's name keeps coming up, Sohail  
16 Saeed. I'm not sure of the nationality, I think it's Pakistan,  
17 but it doesn't matter. I think it's been established he was  
18 foreign born. He was in, I believe, wastewater treatment and  
19 he remained. He remained for several months. He wasn't  
20 transferred. He's foreign born. He was given the opportunity  
21 to stay because he was awaiting his P.E. license result.  
22 He didn't pass. Moved.

23 Now we're comparing -- are we comparing apples or  
24 apples and oranges? What are we comparing? We have a  
25 foreign-born individual who was foreign born who has a chance

1 to stay. When he doesn't pass, where do they move him?  
2 Wastewater engineering because that's where the slot was that  
3 was available. So we have to look at the entire picture when  
4 you hear these allegations of discrimination.

5 You have the allegation of discrimination regarding --  
6 I made a list here when Mr. Freking was discussing it.

7 Oh, I thought that was interesting. Mr. Karney's  
8 concern because of the prior administration, I think he used  
9 the word "silly." Mr. Karney said it was a grand jury  
10 investigation of the prior full-time director. Grand jury  
11 investigation. I don't know if it's silly to be concerned that  
12 you're following the rules and the law when your predecessor  
13 left under such a cloud. What are you going to do when you  
14 take that job and are you going to be just nonchalant, let it  
15 go? Well, the overages were all reasonable. It was all  
16 determined it was fine. Forget about it. You heard  
17 Mr. Campbell say you can't forget about it. You got to play by  
18 the rules.

19 Now, when we get into these situations on  
20 reclassification and reprimand, you also hear the argument that  
21 when he was promoted, he wanted to be in wastewater engineer,  
22 and where was he sent? Storm water management under  
23 Mr. George. And I'll discuss Mr. George briefly in a moment.  
24 He was given a very top critical job to handle. Admittedly, no  
25 engineers were really knowledgeable in that area, and there is

1 an allegation, well, he was denied training. You heard  
2 Mr. Campbell. I think it was Mr. Campbell discussed, possibly  
3 it was not, it might have been Mr. George, that the training  
4 that was involved involved touching that area but had other  
5 aspects to it. But didn't you also hear in the testimony that  
6 Mr. Bahar was sent to Florida, something today wouldn't be such  
7 a bad thing to happen, sent to Florida for training? If  
8 someone has discriminatory intent underlying all their actions,  
9 would you send somebody to Florida for training? He wasn't  
10 denied all his training. Businessmen and managers have to  
11 judge which is appropriate and what they think is the right  
12 thing to do. He was given that opportunity. He did a good job  
13 at it too. The evidence is he put it together. He worked on  
14 it and the county -- somebody even copied it. He was very  
15 successful there.

16 You have the argument of the three individuals which I  
17 think is also very interesting. We'll start with Mr. Huang.  
18 Mr. Huang is sewers chief engineer. Mr. Huang no longer has  
19 all the people working for him. He takes that as some type of  
20 an affront, okay. I think that's obvious from his testimony.  
21 He was placed in the regulatory response unit, no loss of pay,  
22 obviously a totally different unit, doesn't have those people  
23 there. You have evidence that's been discussed. You'll have  
24 evidence in the jury room that a division head such as  
25 Mr. Huang, there's only six of them. A division head had to be

1 placed in that experience. Because of his -- all his years of  
2 experience, that's who you want. I think it was 1.4 billion  
3 dollar consent decree, thousands of dollars in penalties for  
4 not keeping up the time requirements for the consent decree  
5 with the government. You put somebody like Mr. Huang there,  
6 that's a stripping of his duties? I don't think so. That's a  
7 demotion? I don't think so. He didn't lose any pay or  
8 anything else. Got all his pay increases. Still there. Still  
9 with the City.

10 You have Rao Donepudi, another example alleged by  
11 plaintiff of this insidious discrimination against foreign-born  
12 individuals. Mr. Donepudi's rating, Mr. Huang gave him a  
13 hundred percent across the board. Mr. Campbell looked at that  
14 and questioned a hundred percent across the board? Agreed with  
15 many of the factors; knocked him down to 90. That was a  
16 terrible insult to Mr. Donepudi. He was knocked down to 90  
17 percent. Had no effect on anybody, his pay or anything. He  
18 exceeds -- he's way above the average.

19 Then we have the situation that Mr. Huang, you  
20 remember Mr. Donepudi said, well, I was recommended by  
21 Mr. Huang to replace him in that division. Remember that? And  
22 you heard Mr. Campbell testify when the time to replace that  
23 critical spot was made, Mr. Donepudi along with other people  
24 were sent to one of the largest seminar, conventions, whatever  
25 you want to call it, dealing with this situation to attend it,

1 I think it was in Los Angeles, I'm not sure, it doesn't matter,  
2 and they came back. They were all asked to give some type of  
3 essay response regarding that. He doesn't do it. He had a  
4 written exam with HR. He didn't do it. He didn't do it  
5 because, you know, I am eminently qualified; Mr. Huang says I  
6 should have the job.

7 And I think that's important because the same thing  
8 happened with the plaintiff. When the plaintiff was in  
9 Mr. Minges's department doing a fine job there, the position of  
10 supervisor of manhole rehabilitation, I think it's called, came  
11 up. You heard the testimony there. You heard that he was one  
12 of three candidates selected by HR to have that position. You  
13 heard that he thought it was I'll use the term "fixed" that  
14 this lady, Cindy Kron, already had the job. They were buying  
15 her doughnuts. Her husband works there or her father. It's a  
16 done deal. You heard Mr. Minges say that's not true,  
17 encouraged them to take -- participate in the interview. And I  
18 think it's really important because we go back to pride. He  
19 had more education than Miss Kron. He is an experienced  
20 engineer. The purpose of the interview was supervisory skills.  
21 This is a different job dealing with employees who can work for  
22 interaction, it doesn't matter if you can build a piece of  
23 wastewater treatment equipment in your sleep blindfolded; that  
24 is not the whole picture of this job. Didn't want to  
25 participate in it. And I submit that's the same thing with

1 Mr. Donepudi .

2 I'm proud of what I do. And I'm not making fun or  
3 light of pride. Pride, we all have pride in what we do. I'm  
4 proud to be a member of the bar and arguing here before you.  
5 I'm sure you're proud to be jurors. We should be proud of what  
6 we do. But sometimes you can't let that pride get in the way  
7 of reality. And that's what occurred here.

8 We have the situation with Mr. Saeed being denied  
9 promotion. Mr. Saeed -- you saw the evidence of career path.  
10 Automatic. Mr. Saeed was no longer an engineer-in-training.  
11 He was now a CET-4. There's no direct path. There's sitting  
12 for exams and you heard some other stuff. And there's also the  
13 ability of management to want to fill people or whether they're  
14 going to fill a spot or not. Therefore, it is at least implied  
15 that that was discrimination against Mr. Saeed. So we have  
16 these situations.

17 And I think I'm leaving it for last because I think it  
18 is a classic situation of blaming or pointing to discrimination  
19 where it can't exist, and that's Mr. George. Mr. George came  
20 over to MSD in 1999, had never met Mr. Campbell. Mr. Campbell  
21 wouldn't know Mr. George if he tripped over him. That was  
22 acknowledged. The decision to cut back -- what really  
23 irritated Mr. George, and this is a sign of discrimination was  
24 made before they ever even met. I submit to you if you want to  
25 discriminate against somebody because they're tall or short,

1 they're dark or light, whatever reason you want to give, it  
2 would be nice to know what they are first so then you can make  
3 your discriminatory choice.

4 In Mr. George's case, Mr. Campbell didn't even know  
5 his position. Sam George. I'm thinking of Phyllis George, the  
6 former First Lady of Kentucky. I don't know if he's from  
7 India, I don't think so but it doesn't matter. There is no --  
8 there was no reason for him to have a clue as to who Mr. Sam  
9 George was as far as his nationality, but yet that's been  
10 raised stripping him of the ability to do his responsibilities.  
11 You have to look at the credibility of the situation.

12 When you get into credibility, you look at all the  
13 witnesses, including the plaintiff.

14 Just touch on the testimony of plaintiff's wife.  
15 Obviously, a very loyal, supporting wife. Can't say anything  
16 better than that. It's interesting, however, that when they  
17 asked -- when asked -- when her husband was denied these jobs  
18 that he sought, including the position of Great American  
19 consulting manager across the river, he deemed that in part due  
20 to his Iranian background, his foreign background, origin.  
21 That's not true. I just did that on a flier. I knew I  
22 couldn't get the job. I had nothing to do with it.

23 I don't think, as plaintiff's counsel has indicated,  
24 they're asking you to believe her credibility as to the effect  
25 of his job, how he liked or disliked his job. I think you have

1 to consider the entire credibility. And I think that's  
2 correct. I think she was being truthful when she said I  
3 believe that was part of the reason he was denied. He believes  
4 that. And that's not a fault. I'm not saying that he's, you  
5 know, when you are a nationality that's in the limelight to  
6 some extent, the concern of it is there. So there's nothing  
7 wrong with it, but you have to look at the mindset. Everything  
8 behind every door is discrimination.

9 You have to talk about credibility. We have  
10 Mr. Johnstone. You heard bashed to a broom closet. But I  
11 think you heard enough evidence from a series of witnesses of  
12 the nature of the facility at wastewater collection. This was  
13 not the Taj Mahal. They were on top of each other. I think  
14 Mr. Minges said three or four in an office. One of the first  
15 projects given to the plaintiff was to seek more space.

16 They're talking about boots. They're all assigned  
17 boots. This is a manhole operation. This is where they climb  
18 down into the manholes. This is where they have TV cameras.  
19 This is where a consent decree gets involved to make sure I  
20 think it was -- I don't know if 300 or 3,000 miles of pipe but  
21 a whole bunch of pipe has to be operated and working. It's one  
22 of those functions of the City that we just don't want to think  
23 about. It's like waterworks, you know, we turn the water on,  
24 it's there. It's there. How it got there, sometimes it  
25 interests us, sometimes it doesn't. This is a function of

1 Metropolitan Sewer District. That's what they do.

2 So you have that scenario. You have that space. He  
3 wasn't told to be treated differently or poorly. He was told  
4 to be worked in class. He obviously, as you'll see in his  
5 complaints to the EEOC, complained about his working for --  
6 reporting to a nonengineer. That was I'm an engineer, I'm  
7 qualified. Again, we go to the pride scenario. And Mr. Wiemer  
8 admittedly is not an engineer but he's a supervisor, and  
9 CET-1s, 2s, 3s, 4s report to him. That is in the table of  
10 organization. Doesn't like it, but that's not adverse  
11 employment.

12 I only have a few minutes and I want to make sure I  
13 talk about the project manager scenario. There is no project  
14 manager on the table of organization. I think the evidence  
15 clearly established that. Clearly, plaintiff over the years  
16 repeatedly sought to have that made a classification and to be  
17 paid the same as a senior engineer with a professional license.  
18 No argument. He did that from 1992, several times. Didn't  
19 happen. He wants to be treated the same as a licensed  
20 professional engineer. The job he has at the time he couldn't  
21 do that. It's not only the City Law, and that goes to some of  
22 the testimony by Mr. Schneider, and it shows when we get into  
23 credibility the extent some people will go to prove their  
24 point.

25 Mr. Schneider basically said plaintiff is trying to

1 set up Mr. Campbell. Set him up. It's not a pleasant thing to  
2 discuss. That was the testimony.

3 What kind of anger is behind this? What motivates it?  
4 I'm not going there, but it gets into the issue of what  
5 motivates your testimony, what motivates your credibility when  
6 you talk about no chair for weeks or days. The same individual  
7 sent an e-mail to the city manager. That's pretty gutsy.  
8 Again, I said in my opening statement there's nothing wrong  
9 with expressing your opinions and fighting for your rights, but  
10 we're talking council, city manager. Never a loss for  
11 words.

12 There's some very telling comments in some of the  
13 exhibits you'll see. There were other employees who were given  
14 awards, and one of them in there Mr. Bahar wrote them and said  
15 the fact that you're getting this award, I'm paraphrasing it,  
16 it makes me sick to my stomach because I was responsible for  
17 that; you shouldn't get that. Another one: I wish you the  
18 best of luck but, you know, that idea was always mine.

19 How else can I present it on behalf of the City? This  
20 gentleman has great pride and that is, again, is not a fault,  
21 but it can cause vision and blindness. It can cause things to  
22 pop out that aren't there. And in this particular case the  
23 plaintiff has the burden. The plaintiff has not shown the  
24 element that you will go through.

25 Plaintiff also has the burden if the City expresses

1 legitimate reasons, they can be any reason, any reason for what  
2 they did, has an additional burden on top of that to show that  
3 those aren't accurate, those aren't true.

4 Mr. Minges testified he went to Mr. Campbell.

5 Mr. Minges explained why. He was 50 feet down the hall. He  
6 was down on the main floor which is better than Mr. St. John,  
7 an American born, I think he was. I don't know if we ever  
8 established that he was. He was down in the basement off the  
9 garage. No windows, anything. We have no complaints to any of  
10 these people for computers, phones, chairs. In fact, we have  
11 e-mails to almost all the way to the governor, we don't have  
12 that, but we have the NAACP, Democratic Headquarters, and  
13 everything else. So it's not a shrinking violet that can't  
14 stand up for his rights. He did that.

15 The other witnesses that testified -- and I think  
16 Mr. Johnstone, whether he knew the position was vacant or not,  
17 he knew that he gave him work to do. He knew it was  
18 satisfactory. Mr. Wiemer the same way. He knew the conditions  
19 of the location. You have to -- and Mr. Minges. So what you  
20 have to have here is all of these people got together  
21 and basically entered into a conspiracy. Mr. Karney,  
22 Mr. Campbell, Mr. Minges, Mr. Johnstone, Miss Johnson all got  
23 together, how can we -- what can we do to make sure we  
24 discriminate against this person?

25 Bottom issue that you're ultimately going to decide is

1 was there an intentional discrimination of the plaintiff based  
2 on his national origin? We firmly believe there's been no such  
3 evidence and you need to return a verdict for the defense.

4           In the last minute I have, on damages, I think when  
5 someone doesn't like their job, maybe can't stand their job,  
6 some of us are in that position, some of us hopefully are not,  
7 you can be upset, you can be disenchanted; but the basis for it  
8 is still before you give damages, it has to be based on  
9 discrimination. And the one thing that can't enter into your  
10 verdict, and I know it won't, if the plaintiff has not in fact  
11 proved discrimination, you can't let sympathy come into play  
12 here. You can't substitute your judgment for the judgment of  
13 the City and their business decisions. That's plain and  
14 simple.

15           We know you'll follow the law as provided by Judge  
16 Watson. And in closing, I just want to again thank you. This  
17 is one of the hardest parts of a lawyer, and I'm sure you'll  
18 appreciate that, lawyers love to talk. I have to sit down, I  
19 cannot say another word. I have to -- I will not squirm but I  
20 have to listen to Mr. Freking give a ten-minute rebuttal which  
21 he has. I can't get back up here. So this is my very last  
22 opportunity to talk to you, and I'm going to use that to just  
23 say thank you.

24           THE COURT: Thank you, Mr. Giglio.

25           Rebuttal.

MR. FREKING: All right. What I'd like to do with this final ten minutes is just give you some ideas because when you get back in your jury room, there may be one or more of you who believe there's going to be a defense verdict for a number of reasons, and what I encourage you to do is stick to your convictions. Make sure you come to a collective decision, the eight of you.

Think of some of the points made by the City. Talked about '92 to 2000 when Mr. Bahar thought he wasn't getting pay increases or they weren't formally making him a project manager. He did not cry discrimination. To hear Mr. Giglio and the City talk, he's crying discrimination about everything. No. He didn't cry discrimination until he met Mr. Campbell. Mr. Campbell told him, I do not like Iranians, and within a very short time, his failure to get somebody to sign off on something allegedly resulted in a referral to the law director.

Mr. Giglio makes the point there was no criminal investigation. Well, there was no criminal investigation, but it was sent up to the law director to see if they could charge him with a crime. What happened was the law director laughed at the request, sent it back and said this is a work performance issue. Probably said a few other things under his or her breath.

Mr. Giglio and the City suggest that there had to be some kind of conspiracy among all these people. Nothing could

1 be further from the truth. We think it all starts and ends  
2 with Mr. Campbell and his boss, Mr. Karney. The importance of  
3 the other witnesses is to demonstrate how their articulated  
4 reasons are wrong. They make up a lot of excuses for actions  
5 that sound good, but when they're tested, they're either false  
6 or they just don't hold any water.

7 He says are these really conflicts in the testimony?  
8 Well, yes, because the decision to reclassify these folks after  
9 reprimand and EEO complaints starts this story. And it's very  
10 much in Mr. Campbell's interest to say it wasn't my idea, so he  
11 points the blame at Johnson and acts like this was an HR thing.  
12 Well, HR comes in, they're not part of a conspiracy. She tells  
13 the truth, says it wasn't my idea, these guys came to me. That  
14 is a critical conflict. A guy is trying to come up with an  
15 alibi, and the alibi is disproved.

16 Who came up with the idea to transfer him to  
17 wastewater collection? It's very much in Mr. Campbell's  
18 interest to come up with an alibi and say I can't be committing  
19 national origin discrimination or retaliation because it was  
20 Minges's idea. Then we have -- ask Mr. Minges under oath in a  
21 deposition, he says I have no idea how Mr. Bahar's name came  
22 up.

23 Now, these are critical conflicts. And you've got to  
24 look at them and judge why is Mr. Campbell, why are Mr. Karney  
25 trying to just distort the truth a little bit?

The United States Supreme Court in a case called Hazen Paper said that discrimination is often very subtle and it can even occur unconsciously. Intentional discrimination can even occur unconsciously according to the United States Supreme Court because people's biases are often well inside their body. Nobody admits a racial bias. No one admits a sex bias. Nobody admits an age bias. Nobody admits they're biased against foreigners. Actions speak louder than words. Actions reveal biases. And you don't have to be burning a cross in order to be accused of being a racist. It can be more subtle than all of that. In employment cases, actions against the most senior foreign-born people in MSD speak louder than words.

In these cases these are -- these are really -- it's pretty amazing, as I said before, I don't know that I've ever seen a pattern like this in another case. And I suggest to you that they come up with reasons, oh, that's a lateral move. Again, they're focused on pay. When you give someone who has 120 subordinates and you give them a, quote, special project that has a lot of budgetary figures to it maybe but they have two subordinates, Mr. Huang considered that a demotion.

These are four, you know, high-level people within that organization. Saeed is almost very comparable to Mr. Bahar. These actions speak louder than words. They can give you all the denials they want to, but you've got to look at the pattern and say, okay, maybe one or two of these things

1 you could explain but this is all connected to Karney and  
2 Campbell, it all occurred within a couple of years, and the  
3 City did not come in and give you any evidence of moving  
4 Americans like this. Believe me, if the City had evidence that  
5 Americans were moved from positions where they were moved from  
6 substantial authority down to virtually no authority, you would  
7 have seen it plastered all over this courtroom. They have the  
8 information. They even made reference to some documents and I  
9 say, well, where are those documents? Guess what, they never  
10 appeared. This pattern speaks volumes, and this reveals the  
11 national origin bias, knowingly or unknowingly, of  
12 Mr. Campbell.

13 Now, with respect to the retaliation, you've got both  
14 national origin discrimination to decide and also retaliation.  
15 You will be instructed that timing is critical, is a critical  
16 way to prove retaliation. You have an internal complaint on  
17 July 27th of 2000. Less than a month later he's reclassified,  
18 he's transferred to wastewater collection, the last desirable  
19 place. The practice of the City's EEO department was to notify  
20 the charged party according to Miss Johnson shortly after a  
21 complaint was filed. So even though Mr. Campbell got on the  
22 stand and tried to say I knew nothing about that complaint,  
23 Miss Campbell told you what the practice was.

24 No significant work given there. He filed an EEOC  
25 charge. Again, no significant work done after that. Another

1 EEOC charge, no significant charge -- work. And then he is  
2 denied the promotion to wastewater engineering. He's  
3 transferred to storm water, no prior experience.

4 Timing means everything in retaliation cases. You  
5 take -- you engage in protected activity and shortly thereafter  
6 you're subjected to a series of adverse employment actions.  
7 That's what it's all about.

8 And last issue I want to address is the six.  
9 Mr. Giglio said, well, there were six people that were  
10 reclassified. When you get back in your jury room and you're  
11 talking about this amongst yourselves, just remember two of  
12 those six were Mr. Bahar and Mr. Saeed. The other four were  
13 American born. The other four remained in substantially  
14 equivalent positions. They had title changes. Mr. Bahar was  
15 sent to a less desirable place. Mr. Saeed went out and got his  
16 P.E. license and it took him three court battles, Civil  
17 Service, Court of Common Pleas, Court of Appeals battle, to get  
18 the promotion that was promised if he got his P.E. license.

19 So you got six people, sure, but you have four that  
20 basically stayed where they were, and you have two foreign-born  
21 people adversely treated. Put that together with the pattern  
22 that's been displayed. I think you're going to conclude after  
23 careful deliberation -- this is a difficult case, but after  
24 careful deliberation you should conclude that Mr. Bahar was a  
25 victim of national origin discrimination and he was also the

1 victim of retaliation.

2 We'll leave it to the collective wisdom of the eight  
3 of you to determine the remedy that you would give Mr. Bahar.

4 Thank you very much.

5 \* \* \*

6 EXCERPT OF PROCEEDINGS CONCLUDED

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17 C E R T I F I C A T E

18 I, Julie A. Wolfer, the undersigned, do hereby  
19 certify that the foregoing is a correct transcript  
20 from the record of the proceedings in the above-entitled  
21 matter.

22  
23 s/Julie A. Wolfer  
Julie A. Wolfer, RDR, CRR  
24 Official Reporter  
25